BRUNEI REPORTS

INDUSTRIAL RESOURCES BHD. v. UNITED NATIONAL FINANCE LTD.

[C.A. (Sir Geoffrey Briggs P., Sir Alan Huggins V.P. & Hooper J., Judicial Commissioners) May 24, 1986]

[Bandar Seri Begawan – Civil Appeal No. 2 of 1986]

Hire-purchase – Motorcar – Legal owner of motorcar applied to register his name as absolute owner but failed to ensure registration – Whether his title affected – Road Traffic Regulations, reg. 47(1).

This was an appeal from the decision of the High Court ([1986] 2 M.L.J. 481). Judgment was given in favour of the plaintiff, which based its claim in detinue and conversion against the defendant. The appellant/defendant, a finance company, had agreed to finance the purchase of a new motorcar from Performance Company Ltd. by one Martin Loh ("the hire-purchaser"). The question raised by this appeal was whether regulation 47(1) of the Road Traffic Regulations affected the title of a legal owner of a motorcar who had applied to register his name as absolute owner but had not ensured that registration had been effected pursuant to that application. The paragraph reads as follows:

"Where the person entitled to the possession of a motor vehicle or trailer is not the absolute owner thereof, but is registered as the owner thereof, any person claiming to be the absolute owner thereof (hereinafter called 'the claimant') may apply to the licensing officer of the district in which the vehicle or trailer is registered to enter his name in the register as the absolute owner in addition to the name of the registered owner."

The learned trial Judge held that the legal owner of a motor vehicle had a duty to take adequate steps to ensure that his claim of ownership was entered in the register within a reasonable time of the creation of his claim.

Held, allowing the appeal: an absolute owner has been given a privilege of having his name entered in the register for the purpose of acquiring the protection which such entry will give him, but he is under no such obligation to exercise that privilege.

Cases referred to:

(1) *Farquharson Brothers & Co.* v. *C. King & Co.* [1902] A.C. 325.
(2) *Mercantile Credit Co. Ltd.* v. *Hamblin* [1964] 3 All E.R. 592, 602.
(3) *Rimmer* v. *Webster* [1902] 2 Ch. 163, 172.
(4) *Eastern Distributors Ltd.* v. *Goldring* [1957] 2 All E.R. 525.
(5) *Central Newbury Car Auctions, Ltd.* v. *Unity Finance, Ltd.* [1957] 1 Q.B. 371.
(6) *Pearson* v. *Rose & Young Ltd.* [1950] 2 All E.R. 1027.
(7) *Moorgate Mercantile Co. Ltd.* v. *Twitchings* [1977] A.C. 890.

COURT OF APPEAL.

S.H. Lim for the appellant.
T.C. Chan for the respondent.

Cur. Adv. Vult.

Sir Alan Huggins V.P.: The question raised by this appeal is whether regulation 47(1) of the Road Traffic Regulations affects the title of a legal owner of a motor-car who has applied to register his name as absolute owner but has not ensured that registration has been effected pursuant to that application. The paragraph reads as follows:

"Where the person entitled to the possession of a motor vehicle or trailer is not the absolute owner thereof, but is registered as the owner thereof, any person claiming to be the absolute owner thereof (hereinafter called 'the claimant') may apply to the licensing officer of the district in which the vehicle or trailer is registered to enter his name in the register as the absolute owner in addition to the name of the registered owner."

The appellant defendant is a finance company ("the financier") which agreed to finance the purchase of a new motor-car from Performance Company Limited ("the dealer") by one Martin Loh Nyuk-loi ("the hire-purchaser"). There was nothing unusual about the hire-purchase agreement, which was dated August 19, 1983. It is common ground that, in accordance with the normal practice in the trade, after a down-payment had been made by the hire-purchaser, the financier paid the balance of the purchase price of the motor-car to the dealer and the dealer was to submit to the Land Transport Department applications on behalf of the hire-purchaser for first registration and on behalf of the financier for registration of its name as absolute owner. The financier was sent an invoice dated August 6, 1983, which recited the name of the hire-purchaser as such, and it made payment against that invoice on August 19, 1983. A duplicate of that invoice should have been supplied by the dealer to the Land Transport Department along with the other necessary documents. Although it was never explained how this came about, the document submitted to the Land Transport Department and purporting to be a duplicate of the invoice, was a forgery, showing the purchaser of the car not as the financier but as one Pg. Muda Hj. Ismail and indicating the purchase to be a straightforward purchase against payment by Pg. Ismail. We have not been shown copies of the other documents submitted to the Land Transport Department, but I presume that they, too, must have been forged and have asked for registration of

Pg. Ismail as owner, unless someone in the Land Transport Department was party to the fraud being perpetrated against the financier.

Unfortunately no witness was called from the Land Transport Department and there was merely hearsay evidence or conjecture as to what transpired in relation to the registration of the vehicle. The registration book suggests that an application for registration had been made by Pg. Ismail on August 11, 1983, for it bears that date as the "date of original registration" and "13.8.83" as the date on which the issuing officer acknowledged payment of the appropriate fee. It would seem, however, that the name of the registered owner was not entered in the registration book until October 10, 1983, – or it may have been November 10, 1983, for the date is shown in figures and the month is not clear: nothing turns upon the precise date. What is common ground is that there was a delay of several months between the date of original registration and the issue of the registration book. One must assume that the book was issued to Pg. Ismail or someone purporting to act on his behalf since he was the ostensible applicant.

In early May 1984 the hire-purchaser applied to the plaintiff for a loan and offered to assign the car to the plaintiff as security. He produced the registration book and explained the fact that the vehicle was not registered in his own name by saying that he had bought it from Pg. Ismail. There was evidence that Pg. Ismail was his partner. The hire-purchaser succeeded in having his own name recorded as registered owner on May 5, 1984 and the plaintiff made no enquiry from Pg. Ismail to confirm the explanation given by the hire-purchaser. The plaintiff agreed to the proposed loan and to the assignment by way of security and it was further agreed that there should be a hire-purchase agreement entitling the hire-purchaser to repurchase the vehicle from the plaintiff when repayment had been made in full. Such an agreement was executed on June 7, 1984. Somewhat prematurely the plaintiff had on May 4, 1984, written to the Land Transport Department a letter, endorsed by the hire-purchaser by way of confirmation, notifying the making of a hire-purchase agreement and asking for the noting in the register of the plaintiff's claim to ownership. Pursuant to that request an endorsement was made in the registration book on May 5. When the new hire-purchase agreement was executed, the plaintiff had no knowledge of the previous hire-purchase agreement made with the defendant. The hire-purchaser continued until August 1984 to pay the monthly instalments due under the first hire-purchase agreement.

After the hire-purchaser had paid two monthly instalments under the second hire-purchase agreement, he assigned on July 18, 1984, his rights under that agreement to one Ong Kok-kiong with the consent of the plaintiff. This assignment was notified to the Land Transport Department and on the same day an endorsement of it was made in the registration book. The name of the registered owner was changed in that book on August 18, 1984.

The hire-purchaser having defaulted in payment of the instalments under the first hire-purchase agreement, the financier sought to repossess the car. In January 1985 it discovered that Mr. Ong was in possession and that he was holding under the second hire-purchase agreement. The financier seized the car on February 12, 1985 and has remained in possession.

The plaintiff framed its claim in detinue and conversion. The defendant financier denied the plaintiff's title and relied upon its own purchase from the dealer in August 1983. Paragraph 2 of the plaintiff's reply denied that the property in the vehicle had ever vested in the financier and paragraph 3 alleged that "at all material times, the property in the said motor-vehicle was vested in the plaintiffs by the sale of the same to the plaintiffs by the [hire-purchaser]". Paragraph 4 alleged that the financier was "estopped and precluded" from saying that the motor vehicle was the property of the plaintiff. It is not entirely clear whether the use of the word "estopped" was intended to add anything more than would have been conveyed by the use of the word "precluded" alone, that is, whether the only issue was is the case within the exception to section 21(1) of the Sale of Goods Act, 1893 or whether it raised one or more separate issues of estoppel? I say "one or more" because it could have been intended to raise either a straightforward procedural estoppel (which, it was suggested by Ground 6 of the Memorandum of Appeal, could only be raised by way of defence and which would imply that the title was not vested in the plaintiff) or what is sometimes called "proprietary estoppel" (which would mean that the legal title had vested in the plaintiff). As I understand it, section 21(1) gives statutory force to "proprietary estoppel," although in the case of the latter the title may not vest in the new purchaser until the estoppel is raised. That subsection is applicable in Brunei and provides:

"Subject to the provisions of this Act, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell."

If I am right in that understanding and, if "proprietary estoppel" is what the pleader intended, then the inclusion of the word "estopped" raised no separate issue. Mr. Davidson, for the defendant financier, clearly understood that there was no plea of procedural estoppel, for it was that understanding which led him to abandon his sixth ground of appeal. It is not beyond doubt now the Chief Justice understood the reply. He stated the principal contentions of the parties as follows:

"The original owner, the defendant, relies on the general principle that the plaintiff cannot acquire ownership of a chattel from someone who has himself no title to it. The innocent purchaser replies that the original owner has been so careless in allowing a rogue to dispose of the property that he may not be heard to deny that rogue's authority to sell it, and that he is precluded by his conduct from denying the rogue's authority to sell within the meaning of section 21 of the Sale of Goods Act."

That expressly refers to section 21. However, he then added –

"The plaintiff is, therefore, obliged to rely on the argument that, if an owner fails to ensure that his claim of ownership is recorded in the register, he may lose his ownership by virtue of his negligence in omitting to do so; in other words, that he is estopped by his negligence from asserting his title."

Later he devoted a whole section of his judgment to "estoppel by negligence," an expression which *Spencer Bower* in his Estoppel by Representation (3rd Ed.) 73 (75) describes as a "false label." In the event I think that nothing turns upon any separate plea of estoppel, because, even if it was intended to raise a procedural estoppel, then (quite apart from the question whether that could be raised by the plaintiff as a basis of its claim) I am satisfied that my decision in the case would be no different, for it is the same conduct which was relied upon both as the foundation of the estoppel and as "conduct precluding."

Again, the Chief Justice held that regulation 47(1) of the Road Traffic Regulations did not itself create an obligation on the absolute owner of the motor vehicle to take adequate steps to ensure that his claim was entered in the register within a reasonable time (and the contrary has not been argued upon the appeal), but that long usage had created an expectation that he would take such steps and that failure to fulfil that expectation could result in his title being defeated by a subsequent fraudulent sale of the vehicle.

Here it must be mentioned that on the hearing of the appeal the plaintiff sought to argue that the conduct of the financier which precluded it from denying the hire-purchaser's authority to sell to the plaintiff included the financier's failure to ensure that the proper documents were submitted to the Land Transport Department for registration of the financier's claim, the financier having left the dealer to submit the correct documents and the dealer (as its agent) having apparently, through the negligence or fraud of its servant or agent, submitted forged documents. It was then said that the financier was liable for the negligence of the dealer. It is conceded that the case was not presented to the Chief Justice on that basis and we are satisfied that it would be wrong to allow it to be presented in that way on appeal. The Chief Justice mentioned the evidence of a witness called by the financier that

"the records suggested .... that in accordance with normal practice, it had been left to the dealer .... to submit the necessary documents to Land Transport Department."

Presumably that was the normal practice of those parties and not of the trade in general, although the Chief Justice added that the dealer was "a well-known and reputable firm." Had the vicarious liability of the financier for the negligence of the dealer been relied upon, it is inconceivable that evidence would not have been called as to the circumstances surrounding the application for registration in August 1983. Indeed, the new argument is directly to the contrary to the finding of the Chief Justice when he said –

"Thus the plaintiff, if Wong's evidence is accepted, and I find him to be truthful and reliable, did initiate the usual procedure to procure the entry in the register of its claim to the ownership of the car. It was, therefore, guilty only of inactivity, by reason of its failure to take positive steps to ensure that registration occurred, rather than by any positive act of carelessness."

The Chief Justice recognised that regulation 47(1) itself conferred upon the absolute owner a discretionary right to apply to have his name entered in the register as such in addition to the name of the registered owner, who, it is common ground, was properly in this case the hire-purchaser. Nevertheless he concluded –

"I am persuaded that any prudent "absolute owner" in Brunei would seek to register his claim; and that he would,

or ought, to realize that anyone in Brunei who saw the register or blue card without any claim to ownership endorsed upon it would assume, and in my view reasonably so, that no such claim existed and that the registered owner of the vehicle whose name appeared in the blue card was entitled to deal with it.

Thus I find that in Brunei, by reason of the different legislation and practice in force for 30 years, there is a duty which differs from that which exists in England, namely to take reasonable steps to register a claim to ownership of a motor vehicle."

Mr. Davidson does not contest that a "prudent" absolute owner would seek to register his claim, but he contends that the test is not one of prudence but one of legal obligation and that the first does not necessarily coincide with the second: prudence may be concerned with a duty owed to oneself rather than with a duty owed to the public. The appellant's case is that the Chief Justice assumed that a regulation which was intended for the protection of the absolute owner has, because it has been so understood, in the event had the effect of imposing a duty on him, so that, upon a failure to fulfil that duty, his title is defeated rather than protected. This result, it is submitted by the appellant, could only have been achieved by making registration compulsory and by expressly providing that a breach of the obligation should postpone the rights of the legal owner to those of a *bona fide* purchaser: the use of the word "may" in the regulation makes such an interpretation impossible.

Mr. Davidson goes on to find support for his argument in the decided cases, which, he says, show that a fraudulent seller cannot pass a good title unless the legal owner has put the seller in such a position that he has ostensible authority to sell. Here, he submits, the financier has not been shown to have done anything which could properly be construed as giving the hire-purchaser ostensible authority to sell: it has, in the words already cited from the Chief Justice's finding, been "guilty only of inactivity, by reason of its failure to take positive steps to ensure that registration occurred." More specifically, it is said that the financier should either have made enquiry of the Land Transport Department as to the apparent delay in delivering to it the registration book in accordance with the letter of application for entry of the financier's name as absolute owner or have made a search in the register itself. I can deal shortly with the latter suggestion, for, if the registration book had been returned with the appropriate endorsement, it would have been reasonable for the financier to assume that the register had been endorsed to the same effect: the obvious step to be taken, if any was necessary, was to enquire about the registration book not to search the register, although such a search would have revealed the fraudulent registration of Pg. Ismail as owner. The reason no enquiry was made was that the Land Transport Department was known to have a back-log of work and its officers had objected to the making of enquiries, which were time-consuming and had the effect of increasing the back-log. Nevertheless, by the time the plaintiff began negotiating with the hire-purchaser the expected delivery of the registration book to the financier had been delayed for nine months. We must accept the finding of the Chief Justice that a prudent owner would have regarded that as an excessive delay and would have made an enquiry regardless of the objections of the Land Transport Department staff, for the reasons which I shall give subsequently. If, however, there was no obligation to register its claim in the first place, there could be no obligation to ensure that an application to register its claim had been complied with.

The Earl of Halsbury, L.C. encapsulated the circumstances of *Farquharson Brothers & Co.* v. *C. King & Co.*[1] in a very few words:

"A servant has stolen his master's goods, and the question arises whether the persons who have received those goods innocently can set up a title against the master."

The servant sometimes had limited power and authority to make a contract of sale to the employer's known customers but there was no representation that he had authority to sell to the defendant and the defendant was not misled. The judgments show that this type of case has nothing to do with estoppel, which is based upon a representation upon which the defendant has acted to his detriment. Mr. Chan argues that in our case the inactivity of the financier in not taking steps to ensure that its application had been processed did amount to a representation to the public that the hire-purchaser had authority to sell, but I think that cannot be right. In *Mercantile Credit Co. Ltd.* v. *Hamblin*[2] Pearson L.J. cited a passage from the judgment of Farwell J. in *Rimmer* v. *Webster,*[3] which is in point:

"The principle underlying those cases is that the man possessed of the prior equity cannot be deprived of his title unless he has been guilty of some negligence. But the word 'negligence' imports the neglect of some duty towards the person injured: *Swan* v. *North British Australasian Co.* (1863), 2 H & C. 175. A man is entitled to deposit his deeds with his solicitor or his banker, or to send his certificates to his broker, or to vest his property in the name of

another person and hand him the title deeds, without thereby giving rise to any implication inconsistent with his own beneficial title, because his acts are in accordance with the common usage of mankind; and no other member of the community, therefore, is entitled to allege that such a course can be inferred. But the course of action above mentioned is also consistent with an intention that the person to whom the indicia of title are entrusted should deal with them; and if it is once proved, or admitted, that such was the intention, the case then falls to be decided in accordance with the principles governing the cases of authority given by a principal to an agent; and the owner comes under a duty to the persons whom he intends to act on such authority to give them notice of any limit that he places on the authority, which he has by his own act made apparently co-extensive with absolute ownership."

Here the financier did not even deliver the registration book to the hire-purchaser, although para 6 of the hire-purchase agreement suggests that the hire-purchaser was entitled to custody of the book during the currency of the hire: he can only have obtained possession of the book by fraud. The last thing the financier intended to do was to part with property in the car to the hire-purchaser.

The facts in *Eastern Distributors Ltd.* v. *Goldring*[4] were complicated. The fundamental question was whether a sale of a motor-van by one Croker to the plaintiff gave the plaintiff a good title. Croker had obtained the vehicle from the then owner (one Murphy) with Murphy's authority to sell it to a hire-purchase finance company, to obtain the agreement of that company to hire the van back to Murphy on hire-purchase terms and to apply the proceeds of sale of the van in paying the deposits on the hire-purchase of the van and on the hire-purchase of a motor-car which Murphy wished to buy from Croker. Croker's authority to sell the van was conditional upon the conclusion of all these transactions. To enable Croker to do what was necessary to this end Murphy provided him with a proposal form and a memorandum of hire-purchase agreement in respect of each vehicle, all signed in blank – and, presumably, with the registration book of the van. The papers thus delivered included a certificate by which Croker certified that the van was in his absolute ownership. As Devlin J. said in delivering the judgment of the Court –

"The simplest way of carrying out the scheme was for Murphy to deal directly with the plaintiffs."

However, Murphy agreed that Croker should sell the van to the plaintiff as his own and this was done. The plaintiff agreed to hire it back to Murphy under a hire-purchase agreement. The transaction in relation to the motor-car was not implemented. Croker told Murphy that the whole arrangement had been cancelled and Murphy, believing that the van still to be his property, sold it to the defendant. The plaintiff sued the defendant to recover the van. In dismissing the appeal from the County Court Judge the Court of Appeal held, that by putting Croker in possession of the van and documents which enabled him to represent himself to the plaintiff as entitled to sell the van to them, Murphy had clothed him with ostensible authority to sell the van. Accordingly the plaintiff acquired a good title and Murphy was left with no title which he could pass to the defendant on the subsequent sale.

Central Newbury Car Auctions, Ltd. v. *Unity Finance, Ltd.*,[5] also shows that in cases involving the sale of a motor-vehicle together with the registration book the vital factor is not that an unauthorised seller has possession of the book. Rather, where the book is delivered to him by the owner, must it be the intention of the owner in making such delivery. In his dissenting judgment at p. 380, Denning L.J. said:

"The question is what conduct on his part is regarded by the law as so serious that it would be unfair or unjust to allow him afterwards to claim it from an innocent purchaser.

To that question thus posed, I answer that on the authorities the mere fact that the true owner is careless in the custody of his goods or in the indicia of title to his goods is not sufficient to prevent him afterwards asserting his title to them."

However, the view of the majority was stated by Hodson L.J. at p. 390 –

"In my judgment the case fell to be determined not upon a consideration of negligence but upon what is the nature of the representation made by the delivery of the registration book. The book itself is not a document of title; its terms negative ownership and it contains no representation by the plaintiffs or anyone else that the thief was entitled to deal with the car as his own."

That was a strong case, because the plaintiff owner was induced to deliver not only a motor-car but also the registration book to a rogue, who signed, and left with the owner, proposal forms for submission to a finance company. The car was in fact still registered in the name of the person who had sold it to the plaintiff, although he had not signed the registration book. That person's name was later forged in the registration book. The rogue or his accomplice sold the car to the first defendant. Hodson, L.J. said that by handing over the registration book the plaintiffs had not "armed the thief

with the power to go into the world as the absolute owner" nor did it give him "the means to represent himself as the owner of the .... car by handing him a document which stated the precise opposite. He found no authority for the "proposition that a car registration book, if produced to a third person, is calculated to convey to that person that authority exists to deal with the car as owner." In my view that position is not altered by the existence of regulation 47(1).

It is clear that in England a motor-vehicle registration book is not a document to title and does not by itself clothe the person registered as owner with ostensible authority to sell the vehicle. The sale of a vehicle without the registration book may raise suspicions as to the title of the vendor, but even a sale with the registration book does not guarantee that the vendor has the legal title. The registration book issued in Brunei contains a similar warning: "the registered owner is the person who keeps the vehicle. He may or may not be the legal owner of the vehicle." It would be strange if regulation 47(1) had the effect of making that warning inaccurate in a case where the legal owner has not applied to have his name entered on the register and endorsed in the registration book.

Pearson v. *Rose & Young Ltd.*[6] is distinguishable because there the fraudulent seller was a mercantile agent within the meaning of the Factors Act, 1889 and the case was governed by section 2(1) of that Act, so that the sale was "as valid as if he were expressly authorised by the owner of the goods to make the same." The registration book was relevant

"because it is not in the ordinary course of anyone's business to dispose of a second-hand car without a log book. The retention by the owner of the log book, therefore, effectually prevents the Factors Act from operating. The handing-over of a log book with the car enables the Act to operate. The owner then clothes the agent with apparent authority to dispose of the car, and the agent is enabled to dispose of it in the ordinary course of his business, and the Factors Act operates to give a good title to an innocent purchaser. To put it shortly, in the case of a car 'goods' in the Act means the car together with the log book."

This brings me to the critical question in this case: Did the plaintiff consent to Hunt, having possession of the log book as well as the car? On the findings of fact by Devlin, J. the answer is clearly 'No' ": p. 1033F.

The finding was that Hunt obtained possession of the registration book by a trick and, therefore, the purchaser acquired no title.

The most recent case to which we were referred was *Moorgate Mercantile Co. Ltd.* v. *Twitchings*[7] which has a superficial resemblance to the present case. There the defendant motor-car dealer, who was a member of H.P. Information Ltd., a company maintaining a private register in which about 98% of all hire-purchase agreements relating to motor-vehicles were recorded, bought a motor-car after ascertaining that the register showed no hire-purchase agreement in relation to it. In fact the plaintiff was the legal owner of the car and had hired it to the registered owner (the seller to the defendant) under a hire-purchase agreement which had not been registered, although it was the plaintiff's usual practice to register all such agreements to which it was a party. There was at that time not even a contractual obligation for members of H.P. Information Ltd. to register their agreements. The County Court Judge held that the dealer had not discharged the onus of proving carelessness by the finance company which would be precluded from denying the seller's authority to sell. The carelessness alleged against the finance company was its failure to take reasonable care to register its hire-purchase agreement.

The House of Lords by a majority held, as had the County Court Judge, that there was no duty on the finance company to register the agreement, although it had been careless in respect of its own property. In the absence of such a duty the carelessness which was disclosed did not constitute an estoppel or "conduct precluding" within the meaning of section 21(1) of the Sale of Goods Act, 1893. Lord Edmund-Davies said at page 919F:

"It is of course desirable that finance companies who are members of H.P.I. should promptly and accurately notify H.P.I. of any new agreement entered into, and this both in their own interest and in that of dealer-members of that organisation. But they are, as I think, under no sort of obligation to join it at all, though Lord Denning M.R. goes so far as to say that they abstain at their peril, for even non-members may find themselves estopped by their failure to join from asserting title against an innocent buyer or seller. I have to say respectfully that such an approach illustrates the risk of creating legal duties where none were ever contemplated. In most situations it is better to be careful than careless, but it is quite another thing to elevate all carelessness into a tort. Liability has to be based on a legal duty not to be careless, and I can find none in this case. As one of my noble and learned friends said in the course of the hearing of the appeal, it is odd that a finance company which, without obligation, takes the precaution of joining H.P.I. Ltd. is thereby placed under a higher duty than those companies who refrain from joining. (We are not presently concerned with the position of a finance company which joined H.P.I. after its rules were changed to exact from new members an undertaking to register all hire-purchase agreements). The circumstances of the present case are markedly different from those of *Ministry of Housing and Local*

Government v. *Sharp* [1970] 2 Q.B. 223, which was so strongly relied upon by learned counsel for the respondents. There a clerk employed by a rural district council had inefficiently carried out a search in the local land charges register, and it was held that the clerk was under a duty of care to anyone whom he ought to have known might be injured if he made a mistake. But in my judgment it is incorrect to say that, in the same way, the plaintiffs know that dealers may suffer if they do not register correctly and that they are therefore liable if they fail to do so. And, if the contrary view be right, it is not easy to see why the liability of finance companies should be restricted to cases where the person said to be injured is a member of H.P.I. Members know that (as we have already seen) the police, the Automobile Association, the Royal Automobile Club and, at least to some extent, members of the public are permitted to make inquiries of H.P.I. even though they are not members. Would finance companies be estopped as against them also? If not, why not?"

He went on to say that if there was a duty, then the failure to post the notification to H.P. Information Ltd. established a *prima facie* case of negligence on the part of the finance company. He ended with another plea for fresh attention to be paid to the need to protect *bona fide* "trade or finance purchasers" and it is, of course, the contention of Mr. Chan before us that the Sultan in Council in making regulation 47(1) has done precisely that and has gone so far as to create a power to register legal ownership, which by usage has become an obligation to register. That is the view which commended itself to the Chief Justice.

I am satisfied that negligence cannot constitute an estoppel or "conduct precluding," unless there is a legal duty and that no legal duty arises under the terms of regulation 47(1), although I accept that there can be a representation by omission sufficient to found an estoppel where there is a duty to act. It must, however, be a legal duty to act and not merely a social or moral duty. See *Spencer Bower, op. cit* 48(55). Can long usage resulting from a misunderstanding of the intended effect of regulation 47(1) alter the rights and obligations of those to whom it relates? I think it cannot. An absolute owner has been given a privilege of having his name entered in the register for the purpose of acquiring the protection which such entry will give him, but he is under no such obligation to exercise that privilege.

If I be wrong as to the existence of an obligation, the question will arise whether there was a breach of duty by the financier. The Chief Justice's conclusion on this aspect of the case appears in this passage:

"Negligence can be committed by failure to take the required action as much as by doing what is careless. Not without hesitation, I have come to the conclusion that the defendant's duty to take reasonable measures to secure registration was not fulfilled. It did nothing at all for about nine months before the date of registration of the plaintiff's claim, not even making a specific enquiry at the Department about the car's blue card, nor searching the register.

The *prima facie* breach, which Lord Edmund-Davies referred to at [1977] A.C. 920H, where he assumed the existence of a duty to register the hire-purchase agreement, cannot be relied upon in the present case for the reasons I have already given. The anxiety I have felt is whether the length of the delay in instituting an enquiry about the issue of the registration book can be a material factor, since the fraudulent sale to the plaintiff could as readily have been made in November 1983 as in May 1984. The breach in each case would be the same, namely the failure to make enquiries. The conclusion I have reached is that the length of the delay must be a material factor. It is not necessary or possible to lay down a time limit within which it is reasonable to wait for the delivery of a registration book, but there must come a time when a reasonable person would begin to suspect that something had gone amiss and ought to communicate with the Land Transport Department. The Chief Justice thought that that time had passed and I cannot say that he was wrong.

I would allow the appeal and enter judgment for the defendant.

Sir Geoffrey Briggs P.: I agree with the judgment which has just been delivered and I have nothing to add to it. The appeal is to be allowed.

Hooper J: I agree this appeal should be allowed for the reasons given by my Lords, that there was no legal duty on the defendants/appellants to register their claim to ownership.

I would like to add one more thing. Even assuming that there was a duty to take reasonable steps to register a claim to ownership of a motor-vehicle, as the Chief Justice held, I personally have grave reservations as to whether the appellants' failure to make specific enquiries at the Land Transport Department about the car's blue card should be regarded as a breach of that duty. The Chief Justice made this finding not without some hesitation.

Had it been found that the failure to register was due to the negligence of the dealer, who was their agent for the purpose of submitting the

relevant documents to the Land Transport Department, I think the position might be different. But the ground upon which the Chief Justice held that the duty was not fulfilled was by doing nothing at all for nine months after adopting the usual practice of giving the necessary documents to the dealer and not making specific enquiries within a reasonable time and not searching the register. I have reservations that these should amount to a breach of that duty.

I agree the appeal should be allowed on the basis that the appellants had no duty to register their claim to ownership and were not precluded from denying the seller's right to sell or estopped from asserting their own title.

AFTER FURTHER ARGUMENT:

Sir Alan Huggins V.P.: There will be costs to the appellant here and below.

Sir Geoffrey Briggs P.: I agree.

Hooper J.: I agree.

Appeal allowed.

Solicitors: *Susanna Lim & Co.; Choo Chan & Wong.*

TAN SIEW HONG v. CHAI TZE YUK

[O.C.J. (Gracia J.) August 4, 1986]

[Bandar Seri Begawan – Petition No. 3 of 1985]

Family Law – Marriage – Petition for nullity – Withdrawal of – Respondent's cross-petition – Petitioner refusing to go through Chinese customary marriage ceremony – Wilful refusal by her to consummate marriage – Decree nisi to respondent – Jurisdiction.

By her petition, the petitioner sought to have her marriage to the respondent declared null and void on the ground of non-consummation. The respondent admitted that the marriage would not be consummated until after they have gone through another ceremony according to Chinese custom. He cross-petitioned for a similar declaration on the ground that the petitioner had refused to go through with the agreed Chinese marriage and alternatively had wilfully refused to consummate the marriage. The petitioner withdrew her petition with leave and did not oppose the respondent's proceeding with his cross-petition.

Held: (1) the petitioner, by refusing the respondent's many requests for arrangements to be made for the Chinese customary marriage to be held, had wilfully refused to consummate the marriage;

(2) the court may assume jurisdiction in divorce proceedings in accordance with the ruling in *Bong Sau Fei* v. *Chong Chui Lien & Anor.*[1];

(3) decree nisi declaring the marriage null and void should be granted to the respondent on his cross-petition with no order as to costs.

Cases referred to:–

(1) *Bong Sau Fei* v. *Chong Chui Lien & Anor.* [1986] 2 M.L.J. 475.
(2) *Jodla* v. *Jodla* [1960] 1 All E.R. 625.
(3) *Tan Siew Choon* v. *Tan Kai Ho* [1973] 2 M.L.J. 9.

DIVORCE PETITION.

Morris Lee for the petitioner.
Andrew Ong and *S.P. Wong* for the respondent.

Cur. Adv. Vult.

Gracia J.: The petitioner sought by her petition filed on December 19, 1985, to have her marriage to the respondent declared null and void on the ground that since their marriage, they had neither cohabited, nor consummated their marriage, and that the marriage was one of convenience only. The respondent, in his answer, denies the latter allegation but admits that there was an agreement made prior to the marriage that they would not live together until the respondent was successful in his application for married quarters from his employers, and that the marriage would not be consummated until after they had gone through another ceremony according to Chinese custom. In his answer, he cross-petitioned for a similar declaration on the ground that the petitioner had refused to go through with the agreed Chinese marriage and refused to cohabit with him when asked to do so and, in the alternative, had wilfully refused to consummate the marriage.

The parties were married on November 26, 1983, in a civil ceremony at the Registrar of Marriages' Chambers at Kuala Belait. The marriage was registered under section 23 of the Marriage Act, Cap. 26.

No provision is made in any Enactment of Brunei for the dissolution of marriages contracted under the said Act but a ruling has been made by the learned Chief Justice in *Bong Sau Fei* v. *Chong Chui Lien & Anor.*,[1] that jurisdiction in divorce proceedings and other related matters may be assumed by the High Court in respect of such marriages, and the provisions of the Matrimonial